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No. 85-1334

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

WILLIAM R. TURNER; CATHY CROCKER; EARL ENGELBRECHT; BETTY BOWEN; BERNICE E. TRICKEY; HOWARD WILKINS; JANE PURKETT; WILLIAM F. YEAGER; LARRY TRICKEY,
Employees of the Department of Corrections and Human Resources for the State of Missouri,
*Petitioners,*

V.

LEONARD SAFLEY, et al., MARY WEBB, et al., individually and as a class of similary situated people,
*Respondent.*

DR. LEE ROY BLACK; DAVID W. BLACKWELL; DONALD WYRICK; BETTY BOWEN; EARL ENGELBRECHT,
Employees of the Department of Corrections and Human Resources for the State of Missouri,
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LEONARD SAFLEY, et al., MARY WEBB, et al., individually and as a class of similary situated people,
*Respondent.*

On Writ of Certiorari to the United States Court of Appeals For The Eighth Circuit

# BRIEF FOR THE STATE OF TEXAS AS AMICUS CURIAE IN SUPPORT OF THE PETITIONER

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22pp

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES





## TABLE OF AUTHORITIES, *continued*

No. 85-1384

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SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

WILLIAM R. TURNER; CATHY CROCKER;
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## INTERESTS OF AMICUS CURIAE

Pursuant to United States Supreme Court Rule 36.4, the State of Texas, by and through its Attorney General, files this brief as amicus curiae in support of petitioner. Texas has had significant experience in the Texas Departmet of Corrections (TDC) with inmate-to-inmate correspondence and supports her

sister state's contention that this correspondence undermines security in a state's prison, while serving little, if any, useful purpose. Texas thus contends that states should be free to prohibit or limit all inmate-to-inmate mail.

TDC's correspondence policies are found in TDC's *Correspondence Rules,* which were adopted pursuant to a lengthy class action litigation known as the *Guajardo* case. *See Guajardo v. Beto,* 349 F.Supp. 211 (S.D. Tex. 1972), *vacated and remanded sub nom. Sands v. Wainwright,* 491 F.2d 417 (5th Cir. 1973), *cert. denied,* 416 U.S. 992 (1974); *Guajardo v. Estelle,* 432 F.Supp. 1373 (S.D. Tex. 1977) (on remand), *rev'd in part,* 580 F.2d 748 (5th Cir. 1978); *Guajardo v. Estelle,* 568 F.Supp. 1354 (S.D. Tex. 1983) (on remand) *aff'd sub nom. Franks v. McKaskle,* No. 83-2508 (5th Cir. July 1984).

In partial settlement of *Guajardo,* in 1978, TDC agreed to provide for unlimited inmate-to-inmate mail in its *Correspondence Rules.* TDC's experience in the years since 1978 has convinced the department that a serious mistake was made in agreeing to allow inmate-to-inmate mail. In October 1985, TDC moved for modification of the agreed injunction in *Guajardo* to allow the department to prohibit inmate-to-inmate mail. *See Defendant's Motion to Modify the Correspondence Rules, Guajardo v. McCotter,* Civil Action No. 71-H-570 (Oct. 1985).

In January 1986 a hearing was held on this motion.[1] At the urging of the district court, the hearing was recessed to determine if the motion could be compromised. The parties did settle on a compromise that allows TDC to restrict inmates whom are adjudicated guilty of serious violations of the *Correspondence Rules* from sending or receiving further inmate-to-inmate mail for up to two years.

While it may prove helpful, this new provision is not nearly enough of a restriction to meet the department's needs. TDC nevertheless agreed to compromise because something was better than nothing, which is what the district court made clear

1. A copy of the transcript of the hearing along with some of the exhibits introduced into evidence has been lodged with the Clerk of the Court. Citations to this lodging will be noted as ("L". at _____."). Texas offers this lodging to illuminate the facts that should inform the Court's legal conclusions.



TDC was going to get unless it settled. (L. at 122-134.) The district court's comments during the hearing implied that the district court strongly believed the case was controlled by *Procunier v. Martinez,* 416 U.S. 396 (1974), rather than *Pell v. Procunier,* 417 U.S. 817 (1974). The Eighth Circuit decision in *Safley* had just been decided, which the *Guajardo* plaintiffs touted to the district court. Had this Court already clearly announced that *Pell* controlled and inmate-to-inmate mail could be prohibited, TDC would either have won in the district court or appealed. In the face of a hostile district court and uncertain law, however, TDC could not suffer the length and cost of further litigation. While the dye has been cast for Texas, she wishes better for her sister states.

That *Pell* controls and the first amendment does not protect inmate-to-inmate mail is well explained in the briefs of Missouri, Iowa, and the United States. In this brief, Texas will limit herself to explaining why inmate-to-inmate correspondence is dangerous, why it cannot be effectively monitored or controlled, and why its prohibition does significantly increase security.

## SUMMARY OF ARGUMENT

The circuit court erred when it concluded that the security concerns presented to prison officials by inmate-to-inmate correspondence were of minimal significance and that a ban on inmate-to-inmate mail was overly restrictive and an unconstitutional infringement of the First Amendment.

Seven years experience in allowing inmate-to-inmate correspondence has convinced Texas that the security risk created by inmate abuse of the privilege is both real and substantial, including murder, drug traffic, and gang activity.

Any response less restrictive than a general ban on correspondence between inmates does little to enhance security. Effective monitoring is impossible. First, there is too much mail. Second, prisoners, particularly gang members, engage in all manner of deception and subterfuge in order to circumvent monitoring procedures. Gang jargon and codes are easily employed in order to ensure that messages, including instructions to kill, are transmitted undetected throughout the system.

Texas agrees with the contention of petitioner that a state should only be required to show a rational basis for implementing a ban of inmate-to-inmate correspondence, and that such a rational basis does, in fact, exist. In any case, given the ex-

perience of the Texas prison system, such a ban is the only effective, and therefore the least restrictive, means of controlling this threat to security.

## ARGUMENT

### I.

### THE EIGHT CIRCUIT VIEW OF THE THREAT POSED BY INMATE-TO-INMATE MAIL IS MISINFORMED

TDC is the second largest state prison system in the nation, housing 38,000 prisoners in twenty-seven facilities. A survey of all prison unit mailrooms in early 1985 disclosed that 33,918 pieces of inmate-to-inmate mail were handled during a two week period.[2] There is no practical means by which TDC can effectively monitor and censor that amount of mail.

Over the past three years, TDC has witnessed a dramatic increase in the number of inmate gangs, gang members, and gang violence. In late 1985, there were six organized groups operating within TDC, with known or suspected membership totaling around 1200. Prison officials are not at all confident that they had identified all members, and are certain that an unknown number of sympathizers and associates exist throughout the system. (L. at 106-110.) TDC estimates that approximately thirty-seven prison homicides in 1984-85 were gang-related killings. (L. at 110.)

Extensive intelligence gathering has revealed that by far the most significant means of corresponding between gang members is through the use of the United States mail. TDC has been plagued by the very security threats posed by inmate correspondence which have been dicussed in past court opinions. Through the mail, prisoners have conducted drug transactions, formulated escape plans and planned gang-related assaults. (L. at 18-28, 51-53, 141-161, 167-174.) *Abbott v. Richardson*, No. 73-1047 slip op. at 3 (D.C.D.C., Sept. 13, 1984) (Bryant, J.); *Mitchell v. Carlson*, 404 F.Supp. 1220, 1224 (D. Kan 1975). They have circumvented protective interfacility

2. Since mail is processed at both the sending and receiving unit this figure actually counts much of the same mail twice. However, the processing and monitoring function must be done at each unit to have any degree of effectiveness, so the time and effort involved is the same as if there were 33,918 separate mailings. Of course this figure does not include the much greater amount of mail to and from the outside, which also must be processed. (L. at 175-186.)



transfers. *Watts v. Brewer*, 588 F.2d 646, 650 n.6 (8th Cir. 1978); *Peterson v. Davis*, 415 F.Supp. 198, 200 (E.D. Va. 1976). They have planned further crimes and generally disrupted effective operation of the corrections system. *See Mitchell v. Carlson*, 404 F.Supp. 1220, 1224 (D. Kan. 1975).

When messages involve obvious gang business or murder they are usually coded or hidden in some manner. The methods vary from the simplest of greetings or innocent phrases that have special meaning only to the knowledgeable reader, to sophisticated number and letter codes that take great time and patience to decipher. When faced with a large number of ingenious inmates with a great deal of time on their hands, a tremendous volume of inmate mail to process, and a limited staff without the ability and knowledge necessary to effectively monitor the mail, the task becomes impossible. TDC firmly believes that this open avenue of largely unrestricted communication is a very significant factor in the growth of gangs and gang violence over the past three years. Interviews with former gang members, together with confiscated inmate mail, has revealed that serious assaults and homicide have resulted both directly and indirectly from messages sent through the mail.

Missouri and other states who have not allowed correspondence between inmates are handcuffed in their effort to produce evidence as to security risks involved in inmate correspondence because they do not have personal experience with the dangers. Based upon the limited record Missouri could provide, the Eighth Circuit wrongly, indeed foolishly, concluded that "...the presumption of dangerousness applied by the *Jones* Court to prisoner unions loses its force in the context of mail between two inmates in two different institutions physically separated by many miles." *Safley v. Turner*, 777 F.2d 1307, 1311 (8th Cir. 1985).

The Eighth Circuit's conclusion underscores the wisdom of this Court's oft-repeated caution that prison administrators must be given broad discretion in the adoption and execution of policies involving institutional security and that courts are ill-equipped to supply the specialized expertise required in this type of decision making. *Bell v. Wolfish*, 441 U.S. 520, 99 S.Ct.

1861 (1979); *Pell v. Procunier*, 417 U.S. 817, 94 S.Ct. 2800 (1974); *Jones v. North Carolina Prisoners' Labor Union, Inc.*, 433 U.S. 119, 97 S.Ct. 2532 (1977). For it is the very ability of "two inmates in two different institutions physically separated by many miles" to communicate information in a fast and efficient manner that has greatly assisted inmate gangs in conducting their everyday business of disruption and violence and in spreading like a cancer from one unit through the entire prison.

The experience of TDC shows that—far from being exaggerated as the *Safley* court suggests—the security concerns of prison officials about inmate-to-inmate correspondence are real and substantial. In contrasting what it considered the minor security concerns inherent in inmate correspondence with the serious potentiality for trouble presented by prisoner union activities in *Jones v. North Carolina Prisoners' Labor Union, Inc.*, the *Safley* court stated:

> First Amendment associational rights, the *Jones* court acknowledges, were more directly implicated but were still subject to a reasonableness standard. *Id.* at 132, 97 S.Ct. at 2541. This was a reflection of the Court's concern with the special dangers inherent in concerted group activity by prisoners. The Court noted the "ever present potential for violent confrontation and conflagration" among inmates, and the fact that "a prisoners' union, where the focus is on the presentation of grievances to, and encouragement of adversary relations with, institution officials surely would rank high on anyone's list of potential trouble spots." *Id.* at 132-33, 97 S.Ct. at 2541.

*Safley* at 1311. Prison gangs and their growth and violence have provided much more than a "potential" trouble spot for Texas prison officials. The "special dangers inherent in concerted group activities by prisoners" have manifested themselves in widespread gang activity, including many homicides. Inmate-to-inmate correspondence has been directly connected to much of this activity. The fears and dangers addressed by this Court in *Jones* are exactly the ones presently being confronted by TDC. Reasonable prison officials might well seek to restrict inmate-to-inmate mail privileges under such circumstances.



In a further attempt to distinguish adverse case law, the Eighth Circuit contrasted the ban on hardback books upheld in *Bell v. Wolfish*, 441 U.S. 520, 99 S.Ct. 1861 (1979), to Missouri's ban on inmate-to-inmate correspondence. The court noted that hardback books, unlike letters, could easily conceal contraband. Additionally, the Eighth Circuit noted the small amount of inmate-to-inmate mail allowed by Missouri could be easily opened and scanned by a single prison officer on a daily basis. *Safley* at 1311-1312. The Eighth Circuit concluded that a letter does not present "the same sort of 'obvious security problem' as does a hardback book." *Safley* at 1312. Given the Eighth Circuit's speculative factual premise, its conclusion may follow. The flaw is in the factual premise. The Eighth Circuit did not understand the realities of inmate-to-inmate mail, showing again the danger in lawyers attempting expert security judgments.

## II.

## WIDESPREAD ABUSE OF THE INMATE-TO-INMATE CORRESPONDENCE PRIVILEGE CREATES SERIOUS SECURITY PROBLEMS

The use of inmate-to-inmate correspondence to conduct all varieties of gang business has been well documented in the TDC system. In the district court hearing to modify TDC's *Correspondence Rules*, mentioned earlier, a TDC inmate and ex-Texas Mafia (TM) gang member discussed in detail how inmate-to-inmate mail was used to investigate and recruit potential members. (L. at 21-24.) He also detailed how he personally sent letters to other units to keep a lookout for an individual who had been transferred after a stabbing incident. The sole purpose of the correspondence was to make members on other units aware that the victim had not been killed and that the job should be completed if he appeared on their unit. (L. at 19-21, 286-288.)

This inmate also testified that correspondence played a significant role in the death of inmate David Robidoux in September of 1984. Robidoux was transferred from Ramsey II Unit to the Eastham Unit. These units are a substantial distance apart and the only reliable means of regular inmate

communications is through the mail. Robidoux, a Texas Mafia member, had been locked up in segregation before his transfer from Ramsey II under what members there felt were curious circumstances. Letters travelled to members on Eastham in which this information was discussed, and the conclusion eventually reached was that Robidoux was an informant and needed to be killed. Shortly after his arrival at Eastham, he was stabbed and killed by TM members. (L. at 29-35, 289-293.) Subsequent to this stabbing, another "hit" letter was sent out through the mail by TM members to kill an inmate who had been transferred from Eastham Unit after witnessing the Robidoux killing. This inmate was also attacked on his new unit. (L. at 35-36.)

The deposition testimony of Salvador Buentello, TDC's gang expert, further explains gang misuse of mail privileges. Buentello testified that recruiting, drug transactions, and the planning of assaults all occur through the mail. Specifically, his investigations and interviews with former gang members revealed that at least four additional known assaults involving death or serious injury were tied to the mail. (L. at 141-161.)

Inmate Ronnie Evans was chairman of the Aryan Brotherhood (AB) white supremacy gang at the Eastham Unit. He received instructions through the mail from "Steering Committee" members on other units to carry out certain "hits" ordered by gang leaders. Evans failed to carry out the mail ordered hits and consequently letters were sent to other members to assasinate Evans. Evans was subsequently attacked and stabbed on the Eastham Unit by several gang members. (L. at 151-154, 258-274, 294-297.)

Buentello received information from two sources that gang letters were sent out containing a reference to "taking out the trash." One ex-gang member admitted that he clearly understood this phrase to mean that inmate Melvin Douglas, nickname Trash Can, was to be killed as soon as possible. Subsequent to these mailings, Melvin Douglas was killed on the Ellis II Unit of TDC. (L. at 154-156, 298-300.)

Inmate Steve Garcia was a Texas Syndicate (TS) member who had been paroled. Unknown to him, he had been marked



for death by the gang over unpaid debts to a gang member. When he returned to TDC he was processed through the Diagnostic Center. Word went out through the mail from Diagnostic to Ellis I Unit that Garcia was in the system and to be on the lookout for him. Ellis I sent the word to other units. By the time Garcia completed the diagnostic process and transferred to his unit of assignment, word of his troubles and the gang's solution was well known by members; he was killed several hours after arriving at the unit. (L. at 156-159, 303-306.)

Raphael Jacquez was a TS member serving at the Retrieve Unit of TDC. It was determined by a member on another unit that Jacquez had wronged a member and was unworthy of TS membership. The only way out of TS is through death, so orders were sent through United States mail to Retrieve Unit to kill Jacquez, and he was subsequently stabbed to death. (L. at 159-161, 224-225, 301-302.)

As these cases illustrate, the most important and effective means of communication for gang members is through the avenue of regular mail service. It is relatively fast and dependable. Other methods exist (legal visits between inmates, messages mailed through outside sources, messages carried by transferring inmates), but none are as dependable and as much in the inmates' control as mail service. The evidence, in the eyes of TDC officials, overwhelmingly shows that gangs rely heavily on the ability to correspond through the mail and that disruption of this communication link would cripple them much more severely than any alternative action. (L. at 17-19, 50-53, 141-142, 168-169.)

The courts should not substitute their judgment for that of prison officials under circumstances such as these. Nor should it matter that other less effective avenues of communication are available to inmates bent on wrongdoing. All security measures can be circumvented, but those responsible for security must nonetheless take reasonable steps to control violence and disorder. A prison system should not be "required to forego controlling one means of communcatiosn where it cannot controll all means." *Abbott v. Richardson*, No. 73-1047 slip op. at 3 (D.C.D.C., Sept. 13, 1984) (Bryant, J.). Those controls

that can be maintained, must be maintained to ensure, to the extent possible, the safety of staff and inmates.

## III.

## NO MEANS SHORT OF A GENERAL BAN ON IN-MATE-TO-INMATE CORRESPONDENCE WILL END THE ABUSE WHICH THREATENS SECURITY AND SAFETY

Respondents, as well as the Eighth Circuit, argue that the general prohibition of inmate correspondence is overly restrictive and that the proper response for a prison system is to monitor inmate mail and thereby restrict the flow of illicit communication. In a system such as TDC, with 38,000 inmates and many units throughout the state, the task of simply processing the tremendous volume of mail is enormous. The energy and expense necessary to properly staff each of twenty-seven mailrooms with knowledgeable monitors who have bilingual abilities as well as knowledge of gang jargon and codes would be overwhelming. A penal institution's financial resources should be considered when prisoners challenge the constitutionality of its practices. *Bell v. Wolfish*, 441 U.S. 520, 99 S.Ct. 1861 (1979); *Ruiz v. Estelle*, 679 F.2d 1115, 1146 (5th Cir. 1982) ("[T]he cost of one proposed remedy in comparison with the cost of others and the demonstrable need for the remedy should both be considered"). *See Pell v. Procunier*, 417 U.S. 817, 826, 94 S.Ct. 2800, 2806 (1974) ("institutional considerations, such as security and related administrative problems," may justify limits on prisoner communications).

Upholding the Federal Bureau of Prisons' rule while refusing to require costly alternatives, one court put the matter this way:

> Ideally we would like to allow this correspondence, and to direct the prison officials to monitor each letter for threats to security or order. But *in practical terms such an Order would cause shifts in manpower, it would result in a need for more help, more money,* and changes in the administration of the entire system of mailing. We cannot act as administrator, and we will not substitute our judgment for that of



> the prison administrators... [w]e are satisfied that [the rule] is as narrowly drawn as the prison system allows.

*Schlobohm v. U.S. Attorney General*, 479 F.Supp. 401, 403 (M.D. Penn. 1979) (emphasis added).

Moreover, experience would indicate that no amount of monitoring, regardless of the resources committed, would effectively curb the abuse of the mail privilege. Inmates at TDC have developed an incredible range of methods to circumvent attempts at censoring inmate-to-inmate mail. The following examples have been obtained through investigation, searches, interviews with inmates, and confiscation of mail; they vary from the simple and straightforward to the sophisticated and complex.

Inmates know that not all mail can be completely monitored. Gang members whose mail is being closely watched or who have been restricted merely use a "clean" inmate who is a secret sympathizer or who has been threatened or intimidated to send out their important gang mail to other members or secret sympathizers. (L. at 27-28.)

Inmates are aware of the abilities of mailroom monitors. Often, bold messages dealing with gang business are sent hidden only by use of the Spanish language if members feel confident that no one can decipher the language, or their own "Tex Mex" variety of it. Two letters included in the Texas Lodging, confiscated in late 1985, are representative of this type of gang communication. They involve inflamed rhetoric by members of the Mexican Mafia (MexiKanemi or E.M.E.) concerning their on-going "war" with the TS. This war resulted in several prison homicides in mid-1985, most victims being members of E.M.E. (L. at 247-257.)

In a cynical dissent in a very recent Fourth Circuit case, which upheld a ban on inmate-to-inmate mail, Judge Murnaghan stated that "the more innocuous a statement might seem, the more devious at cryptography the authorities might assert the would-be communicator to be." *Vester v. Rogers*, No. 85-6639 (4th Cir. July 18, 1986) (Murnaghan, J., dissenting).

Such assertions by Texas prison authorities, however, are not based on some unreasonable attempt at creative argument, but on their experience gained through dealing with gangs and gang correspondence. (L. at 25-26, 162-165.)

TDC has confiscated a copy of the constitution of the Aryan Brotherhood, one of the largest and most vicious gangs operating in the prison. (It is interesting to note that this writing was disguised within the text of a class action legal document.) This constitution discusses the duty of different units to stay in communication with one another and the methods by which to accomplish this end. (L. at 187-198.) Concerning the important area of correspondence in recruitment of members the constitution states:

> IV. If a chairman submits a candidate's name to his S.C. (Steering Committee) member, he should word it as follows: "John Doe wants to know how life is over there." When the S.C. has made its investigation, and if the candidate is to be approved, and placed in training, the S.C. will respond as follows: "Tell John Doe that life is fine." If the candidate is denied, the S.C. will say, "Tell John Doe that life is bad." (L. at 194.)

In discussing the area of gang-ordered killings and the proper procedure to be employed, members are informed as follows:

> J. The S.C. must keep all units informed of the plaintiff-class hit list. The chairman/captain on each unit will be responsible for keeping his hit list up to date, and carrying out those assignments on his individual unit. Unless there is no question, such as a plaintiff that deserts or an automatic emergency situation, a chairman will consult his assigned S.C. member before ordering a hit. This is to ensure that no false moves are ordered. If the hit is ordered but cannot be carried out at its assigned time, the S.C. (all five) must be informed of the problems involved:
>
> I. All additions to the plaintiff-class hit parade list will come from S.C. members only. No exceptions, unless there is no doubt as defined earlier.



> If an individual is to be added to the hit list, the S.C. over his unit will say, "John Doe (individual's name) got a write-up the other day. When this is spoken, you add John Doe's name to your parade list. (A good stash place for this list is.....
> (L. at 195.)

Throughout the document legal terms such as "plaintiff" and "plaintiff-class" are used to refer to the gang and its members. Investigation has revealed that other legal phrases, as well as all types of other innocuous words and phrases, have been added to the underground vocabulary of the AB and other gangs. "File a brief," "file an affidavit," "file a writ," "file a suit," in AB parlance, are all instructions to kill another inmate. Depending on how it is used in a sentence and what is already known about an individual, "give our regards to John Doe" could mean that the inmate is to be killed, or that the inmate has been approved for AB membership. (L. at 199-205.) TDC's list of gang phraseology now includes in excess of 100 phrases, and of course many have not been uncovered.[3]

If mail censors confiscated each piece of mail in which one of these phrases appeared, nearly all mail would be banned. On the other hand, if mail was only stopped when monitors were sure hidden meaning existed, virtually all mail would go through. This dilemma confronts mailroom personnel daily.

The gang assault on inmate Ronnie Evans, discussed above, exemplifies efficient gang use of these kinds of innocuous phrases. Letters, confiscated after the attack, reflect the increasing displeasure of gang leaders with Evans' work. (L. at

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3. The Texas Lodging includes confiscated letters in which several of the listed terms are used. One letter states "we just filed suit against Texas Monthly Magazine" and advises caution since they are "Trying to file a countersuit at the same time." The underlying meaning is that AB has put out hits on Texas Mafia members and TM is seeking to strike back.

Another letter states: "A fried of mine was going to Austin Babtist College and he let us know about them Texas Medical changing colleges." The letter continues in this vein with more innocuous information. In fact, this letter is a discussion between two gang members concerning the significant defection of Texas Mafia members to the rival AB. (L. at 275-284.)

253-274.) In a September 6, 1985, letter, Evans was told, in connection with certain members marked for killing due to their own failure to carry out ordered hits:

> Hey Bro
>
> Look, that one with the legal work should of filed when the court told him too 5 months ago. But he didn't nor did the other one that was on the suit. The court gave them both ample time to deal with it and they chose not to. It was just that they failed to defend the class action as the United States Constitution calls for, Period.....
>
> You can tell the other plaintiff's that if anyone neglect, the same ruling will be passed on them.....
>
> If you take care of whats to be *and* regain contol of the class plaintiff's I'll personal writ your judge(s) and take a stand.

(L. at 259.)

Letters sent to Evans over the next several months by AB members urged him to take care of the Eastham hits as ordered by the "Court." A November 16, 1984, letter implored "but Ronnie man, you need to have that other brief prepared and filed from out there Bro as soon as possible man." (L. at 271.)

Finally, a letter was sent from Ellis Unit to another AB member at Eastham on November 20, 1984, that sealed Evans' fate:

> November 20, 1984
>
> Bros,
>
> In reference to the class action, *Ruiz v. Procunier,* a recent Supreme Court RULING has taken place and it is by order of the Court that inmate John S. Montes replace Ronnie Evans in heading and coordinating the present litigation in the class action entitled *Ruiz v. Procunier.*



> This is the result of an "en banc" (unanimous) opinion of the Court and there seems to be a mistaken opinion that such Court Orders are appealable. This *is not* the case! The Supreme Court defines the law as the law is, and so it stands.
>
> Each and every plaintiff in the above entitled class action is fully expected to abide by this Ruling, and the recipients of this notice are to help circulate and inform plaintiffs of this Ruling.
>
> Love and Respect,
>
> Bosco

(L. at 274.)

On December 1, 1984, in the Eastham Unit dining room, Ronnie Evans was attacked and stabbed by several AB members. (L. at 294-297.)

Codes create another major obstacle to effective monitoring of Inmate mail. Even if the code is discovered, it is a losing proposition to expect to catch all the correspondence making use of it. Cryptic messages properly hidden will constantly sneak past the best of busy monitors. (L. at 162-166, 21-27, 37-40.)

Among the codes TDC first uncovered was one used by TS which employed a Braille system and was designed by an inmate who was going blind. A series of grouped dots spread throughout a letter would form the hidden message. As time progressed, TS developed another code using both dots and symbols. (L. at 217-218, 230-231.) Inmate letters are routinely filled with such drawings and symbols, and so these letters initially aroused little suspicion.

As gangs have proliferated at TDC, so have the variety and sophistication of codes. Apparently, the most effective and widely used code, which has several variations, is a numerical or "direct substitution" code. Basically, each letter of the alphabet is assigned a different number and the numbers are incorporated throughout the innocent version of the correspondence to form messages. The recipient then pulls all the

numbers and translates them to letters thereby "decoding" the message. The number-letter relationship can be changed by prearranged agreement or through some tip off in the message itself. This allows for continued use of the code despite the fact that authorities might break the version being employed. To apply twenty six variations to each inmate letter containing numbers, is to ask the impossible of any mail monitor. (L. at 206-216, 36-48.)

The ex-Texas Mafia member, whose hearing testimony has previously been discussed, gave a detailed explanation of gang use of this type of code, including how he personnally used it in sending messages concerning gang recruitment and hits. Additionally, his testimony included working through a sample coded letter which he himself had written and an explanation of how this garden-variety inmate letter actually reduced down to an order to kill the unit warden. The method by which he had hidden the all-important code indicator in the letter required a trial and error method of decoding which would take even a person in the know a significant period of time to resolve. But as the witness explained, unlike a TDC mail monitor, the one thing an inmate has is plenty of time. (L. at 36-48, 83-88.)

The latest innovation in secret correspondence used by AB, and perhaps other gangs as well, involves the use of soap (or very recently, egg white) diluted in water and then applied to paper with any type of sharply pointed object. An "invisible" message can be written on the edges or between the lines of the innocent "cover" letter. In order to effectively screen a letter for this type of hidden message, the page must be held to a bright light. (L. at 24-25, 219-222.)

All these methods, and perhaps many others, are being used today within the Texas prison system in an effort to circumvent the mail monitoring effort. No doubt many are effective. It is unreasonable to believe that prison officials could ever obtain sufficient resources or expertise to adequately screen the huge volume of mail moving through the system on a daily basis. Moreover, it is folly to suggest that the Constitution compels a state to spend funds on such an effort in order to preserve the correspondence rights of inmates in prison.



## CONCLUSION

Texas' experience demonstrates that a state's interest in banning inmate-to-inmate mail in order to provide security and order within the institution is not only reasonable, but the least restrictive method to accomplish that end.

Respectfully submitted,

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